IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2276 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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UNITED INDIA INSURANCE CO.LTD - Appellant(s)
Versus
KANTABEN PITAMBARDAS RATHI & 4 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MS SONALI R DESAI for Defendant(s) : 1,
None for Defendant(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 02/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

When the application for interim stay of execution of the award was argued at the last hearing on 19/7/2006, the learned counsel for the parties agreed for early final disposal of the appeal and accordingly the matter has been heard today.

2. This appeal is directed against the judgment and award dated 3/7/2005 passed by the Motor Accident Claim Tribunal, Bharuch in M.A.C.P. No.269 of 1995 by which the Tribunal awarded a sum of Rs.18,87,500/- with interest at the rate of 9% per annum from the date of petition in the year 1995 till the year 2000 and thereafter at the rate of 6% per annum till realisation of the amount.

3. The Claim petition was filed by the widow and two children of Dr.Pitambardas Rathi aged 44 years, who died in a motor vehicle accident on 1/2/1995. The accident took place between a luna moped which the deceased was riding and the truck insured by the appellant-insurance company. The claim petition

was filed for a sum of Rs.13,66,740/- by widow of the deceased aged 36 years, daughter of the deceased aged 15 years and son of the deceased aged 12 years. The Tribunal held that the accident was caused by the sole negligence of the truck driver.

4. The Tribunal further accepted the case of the claimants that the deceased was getting income from the following three sources.

No.	Rs.	Particulars
1	6264.50	Salary of Sevashram
2	2000.00	Salary for working as a Assistant to Dr.A.I.Maljiwala -physician
3	3000.00	Salary for working as a part time Medical Officer in a trust at Tham.
Total	11264.50	Per month

Accepting the aforesaid income as the income of the deceased on the date of the accident, the Tribunal held that the annual income was Rs.1,25,000/-. Taking into consideration the prospects of rise in income in future, the Tribunal assessed the annual income of deceased at Rs.1,87,500/-. After deducting 1/3 amount towards his personal expenses, the dependency was worked out to Rs.1,25,000/- per annum.

Considering the age of the deceased (44 years), the Tribunal applied multiplier of 15 and assessed the loss of income of the deceased at Rs.18,75,000/-and passed an award for Rs.18,87,500/-.

5. Aggrieved by the said award, the insurance company of the truck has filed this appeal. When the appeal came up for admission hearing on 19/7/2006, it was brought to our notice that the insurance company had paid Rs.34,19,288/- on 12/7/2006. The amount was deposited on 12/7/2006 pursuant to the order dated 21/3/2006 passed by the Court while issuing Rule on the application for condoning the delay. Out of the amount of Rs.34,19,288/-, Rs.1,58,407/- was deducted as TDS on interest. Hence, the amount actually deposited was Rs.32,60,881/-.

6. Mr.R.H.Mehta, learned counsel for the appellant-Insurance Company has submitted that the Tribunal has committed serious errors while giving the findings on the question of negligence as well as on the question of quantum of compensation.

7. As far as the issue of negligence is concerned, we have heard the learned counsel for the parties and have also gone through the First Information Report and the panchanama. The accident took place on 1/2/1995 at about 5:30 p.m. and at about 7:20 p.m., the driver of the truck lodged FIR before the Bharuch Taluka Police Station. In the complaint itself, the truck driver had stated that one person was coming on a luna moped and while trying to save the luna rider, the truck knocked down the luna and left the road. The driver could not control the truck and it dashed with a tree and turned turtle and landed into a ditch. The luna rider received serious injuries and died on the spot. Both the truck driver and the cleaner also sustained injuries. If at all the panchnama (Exh.32) throws any light, it shows the speed with which the truck was being driven. The truck hit the Babool tree with such force that the entire tree along with the roots was uprooted and the driver side window also came under the truck. The front bumper of the truck was also damaged. Luna was also severely damaged. Even the damage to the truck was assessed by the panchas at Rs.70,000/-.

It is also required to be noted that the truck driver did not step in the witness box. Since the luna rider himself had died on the spot and no eye witness to the accident coming forth before the Court, we have to consider the question on the basis of the documentary evidence in the form of FIR (Exh.31) and the panchnama (Exh.32). According to the drivers version in the FIR, he had tried to save the luna rider. If the driver was on the correct side of the road and was driving the truck at reasonable speed, the truck driver would not have knocked down the luna and uprooted the Babool tree. The very fact that the entire tree was uprooted and damage to the truck was to the tune of Rs.70,000/- shows that the truck was being driven at an excessive speed and in a reckless manner. The deceased, a medical practitioner aged 44 years was riding the moped called luna. In the facts and circumstances of the case, it is clear that the accident was caused by the sole negligence of the truck driver.

8. Coming to the question of compensation, we find that the evidence led on behalf of the claimants

is unimpeachable in so far as the deceased was shown working as a Medical Officer at Sevashram Hospital and had a monthly salary of Rs.6264/50. So also, the evidence of Dr.A.I.Maljiwala himself that the deceased was working as an Assistant with him at a monthly salary of Rs.2,000/- has not been shaken in the cross-examination. However, as far as the evidence for the third salary item is concerned, the claimants' case is that the deceased was employed by a trust called Darul-Uloom-Moinul Ismal, Razanagar, Tham at a monthly salary of Rs.3,000/- per month from 10/1/1995 which is just three weeks prior to the date of the accident. Two witnesses were examined in support of the claimants case that deceased was working as a part time Medical Officer in Darul-Uloom-Moinul Ismal, Razanagar, Tham. Hafis, aged 45 years at Exh.50 stated that he was a clerk of the trust and that the said trust runs a hospital. The witness sought to produce the document at Mark 15/8 purportedly signed by the managing trustee of the trust. However, the evidence of the said witness is not of any importance as he was merely a clerk,

employed by the said trust.

9. The managing trustee of the said trust was examined at Exh.52. He produced the appointment order appointing the deceased as a part time doctor in the hospital for the students studying in the educational institution run by the trust. The appointment letter Exh.53 produced by the said witness is in English language but the witness admitted that he did not know English language. After stating that what the trust is running is not a hospital but a clinic, the witness also stated that salary was not being paid by cheque. The witness also was not in a position to produce any books of accounts of the trust to show the payment of salary to the medical officer employed by the trust, nor even to give the name of any other doctor employed before the deceased or after the deceased. In view of the aforesaid obvious infirmities in the evidence led on behalf of the claimants, it is not possible to believe that the deceased was employed by the trust at all. The managing trustee is aged 72 years and he appears

to be essentially agriculturist and does not know English, still the appointment of order is in English language. Moreover, the very fact that the deceased is shown to have been employed by the said trust form 10/1/1995 and the accident took place on 1/2/1995 makes the claimants' case suspect.

10. In view of the above facts, we are of the view that the Tribunal erred in assessing the annual income of the deceased on the of accident at Rs.1,25,000/-. As already indicated earlier, the deceased was only earning monthly income of Rs.6264/50 from the Sevashram Hospital and Rs.2000/- from Dr.A.I.Maljiwala i.e. total Rs.8264/50, rounded off to Rs.8300/- i.e. Rs.1,00,000/- per annum.

11. Since the deceased was a qualified medical practitioner and aged 44 years, it is reasonable to proceed on the basis that in future the income of the deceased would have increased. Adding the usual percentage of potential increase in the

income at 50%, the annual income of the deceased for the purpose of assessment of damages can be taken at Rs.1,50,000/-. Deducting one third amount therefrom as the expenses the deceased would have incurred on himself, the loss of dependency is required to be assessed at Rs.1,00,000/- per annum. The Tribunal has applied multiplier of 15 and looking to the age of the deceased (44 years), the same appears to be in order for a professional like a doctor. Accordingly, the compensation payable to the heirs of the deceased under the head of compensation for loss of dependency benefit would work out to Rs.15,00,000/-. Adding thereto the amount of Rs.10,000/- as the conventional amount for loss to the estate and Rs.10,000/- as the compensation for loss of consortium to the widow of the deceased and Rs.2,500/- for the funeral expenses, the claimants would be entitled to get a total amount of Rs.15,22,500/- with proportionate costs and interest at the rate awarded by the Tribunal. As the Tribunal has awarded the interest at the rate of 9% per annum from the date of application till

the year 2000 and thereafter at the rate of 6% per annum, we do not interfere with the same.

12. The appeal is accordingly partly allowed. The award dated 3/7/2005 passed by the Motor Accident Claim Tribunal in M.A.C.P. No.269 of 1995 is modified to the extent that the amount of compensation awarded is reduced from Rs.18,87,500/- to 15,22,500/- with simple interest at the rate of 9% per annum from the date of claim petition till December 2000 and thereafter at the rate of 6% per annum till the date of deposit and with proportionate costs of the claim petition. The amount paid under Section 140 of the Act, if any, shall be deducted first from the awarded amount.

13. The differential amount of Rs.3,65,000/- together with proportionate interest and costs shall be refunded to the appellant-united insurance company limited within one month from the date of the receipt of the certified copy of this judgment.

14.Earlier by our order dated 19/7/2006 in Civil Application No.8332 of 2006 with Misc. Civil Application No.1679 of 2006, we had directed the Tribunal to invest the sum of Rs.20 lakhs in fixed deposits with a nationalised bank for a period of five years with usual conditions about prohibition against encumbrance etc. of the deposits and also with permission to the claimants to withdraw interest periodically accruing on the fixed deposits. Since claimant no.1-Kantaben is the widow of the deceased, claimant no.2-Yogita is the daughter of the deceased and claimant no.3-Rajesh is the son of the deceased, we direct that apportionment be made in the ratio of 80:10:10 for the widow, daughter and son respectively. Amount of Rs.20,00,000/- already ordered to be invested as per our order, shall be invested in the name of claimant no.1-Kantaben P.Rathi and the interest periodically accruing on the said deposits is permitted to be withdrawn by claimant no.1. The balance of the amount payable to claimant no.1 as per the apportionment made by this order shall be disbursed to her by an account payee cheque. The

amounts payable to claimant no.2-Yogita and claimant no.3-Rajesh shall be disbursed to the respective claimants by account payee cheques after deducting the amount of Rs.2,19,288/- if already disbursed earlier pursuant to our order dated 19/7/2006. Ms.Sonali Desai states that claimant no.2- Yogita, daughter is already married and therefore, the learned advocate for the original claimants shall submit particulars about her married name and address before the Tribunal so that as per this judgment, the amount can be paid by account payee cheque in her married name.

15. The First Appeal is accordingly disposed of in the above terms with no order as to costs of this appeal.

(M.S.SHAH, J.)

(K.M.MEHTA, J.)

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